

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR08-89

August 27, 2008

NICHOLAS RAYFORD
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE INDEPENDENCE
COUNTY CIRCUIT COURT
[CR-02-206]

HONORABLE JOHN DAN KEMP,
JUDGE

AFFIRMED

This is an appeal from a revocation of probation. On appeal, appellant, Nicholas Rayford, argues that there was insufficient evidence to revoke his probation. We affirm.

On October 11, 2004, Rayford entered a nolo contendere plea to the offense of sexual assault in the second degree and was sentenced to eight years' probation. One of the conditions of Rayford's probation was that he not commit a criminal offense punishable by imprisonment. On June 25, 2007, the State filed a petition to revoke Rayford's probation, alleging that he had been charged with the offense of indecent

exposure.¹ After the revocation hearing, the trial court revoked Rayford's probation and sentenced him to ten years in the Arkansas Department of Correction. Rayford now brings this appeal.

Rayford argues on appeal that there was insufficient evidence to revoke his probation. A trial court may revoke a defendant's probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In probation revocation proceedings, the State has the burden of proving that the defendant violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). The State need only show that a defendant committed one violation in order to sustain a revocation. *See Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

Testimony at the revocation hearing revealed that on May 29, 2007, members of the Southside High School girls' senior-high basketball team were holding a car wash at the corner of St. Louis and Harrison streets in Batesville. Two of the girls who were at the street holding signs for the car wash testified that Rayford drove by three times; that

¹Although the petition for revocation alleged that Rayford had been charged with the offense of indecent exposure, the State amended the petition at the beginning of the revocation hearing to allege that Rayford had committed the act of indecent exposure instead of merely alleging that he had been charged with that crime.

he made rude hand gestures the first two times he drove by; and that the third time, Rayford was stopped at the stoplight and had the tinted front-passenger window, which was facing the girls, rolled down, had his pants down, and was masturbating. Both girls testified that they saw Rayford's hand and his penis, and one of the girls testified that Rayford's hand was moving up and down on his penis.

Rayford testified that he had a skin condition that caused him to itch, especially in his groin area. He presented several witnesses, including two doctors, his parents, and his fiancée, to testify about this condition. He also submitted several receipts for prescription medications used to treat this condition.

A person commits indecent exposure if, “with the purpose to arouse or gratify a sexual desire of himself . . . exposes his . . . sex organs: (1) in a public place or in public view; or (2) under circumstances in which the person knows the conduct is likely to cause affront or alarm.” Ark. Code Ann. § 5-14-112(a) (Supp. 2007). Rayford argues on appeal that he was not exposing himself for sexual gratification, but rather to scratch an itch.

Rayford's testimony and the testimony from the girls on the Southside basketball team were in direct conflict — the girls testified that Rayford was masturbating, and Rayford testified that he was scratching to relieve the itch of his skin condition. Where testimony is conflicting, this court defers to the trial court's determinations with regard to the credibility of witnesses. See *Newborn v. State*, 91 Ark. App. 318, 210 S.W.3d 153 (2005). In this case, the trial court clearly credited the girls' testimony that Rayford was

masturbating as he sat at the stoplight with his window rolled down and in their line of sight. We affirm the trial court's revocation of Rayford's probation.

Affirmed.

BIRD and MARSHALL, JJ., agree.